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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11675/2016 & CM No. 5486/2018

% Date of decision : 12th February, 2018

**JAMIA ARABIA NIZAMIA WELFARE EDUCATIONAL
SOCIETY**

..... Petitioner

Through :

versus

**D.G., ARCHAEOLOGICAL SURVEY
OF INDIA & ORS.**

.... Respondents

**Through : Dr. Ashwani Bhardwaj, Adv.
for R-1 & 2.**

**Mr. Jayant Tripathi and
Mr. Dinesh Dahiya, Advs. for
R-3.**

Mr. Shams Khwaja, Adv. for R-4

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition has been filed by the petitioner, in public interest, complaining that the respondents have failed to declare the Lal Mahal, a monument in the Hazrat Nizamuddin Basti as a protected monument under the '*The Ancient Monuments & Archaeological Sites and Remains Act, 1958*' (hereafter '*the Ancient Monuments Act*').

2. A similar grievance was made by this writ petitioner by way of W.P.(C) 5003/2016, proceedings wherein culminated in an order dated 27th May, 2016, the operative part whereof reads thus :

“Having heard the learned counsel for both the parties and keeping in view that the representation made by the petitioner on 31.03.2016 regarding declaration of the said monument as a protected monument is yet to be considered by the respondents No.1 and No.2, we consider the petitioners representation dated 31.03.2016 and pass an appropriate order in accordance with law within three months from today. The order that may be passed shall be communicated to the petitioner and thereafter the petitioner is at liberty to file a fresh writ petition, if so advised.

The writ petition is accordingly disposed of.”

3. It is to be noted that the petitioner had impleaded only two respondents therein, which were the Director General- Archaeological Survey of India as respondent no.1 and the Secretary, Ministry of Culture, Government of India as respondent no.2.

4. Complaining of wilful disobedience of this order, the writ petitioner filed Cont.Cas (C) 1060/2016 which was also disposed of with the following observations :

“Learned counsel for the respondents who appear on advance notice states that the complex was in dilapidated condition, the team had to inspect the complex a number of times. She states that a report is under preparation and shall be forwarded to the contempt authority in the ministry of culture within a period of four weeks. She further states that the

direction of this court in the order dated 27th May, 2016 shall be complied with in letter and spirit within a period of eight weeks. The statement made by the learned counsel for the respondents is accepted by this Court and the respondents are held bound by the same.”

5. The present writ petition has been filed by the petitioner complaining that despite the above orders, the respondents are ignoring the historical importance and the archaeological value of the *Lal Mahal* and have failed to declare the same as a protected monument. In this regard, the writ petition makes the following prayers :

“ A) Issue a Writ or any similar order/directions in nature of Writ of Mandamus directing the respondents, particularly the respondent No.1 to take appropriate actions or to take appropriate steps to declared Lal Mahal as protected monuments under the AMASR Act 1958 and The AMASR (Amendments and Validation) Act, 2010.

B) Issue a Writ or any similar order/direction in nature of Writ of Mandamus directing the Respondent no.2 to take appropriate steps to declared Lal Mahalas as protected monuments and pursue the matter with respondent No.1.

C) Issue a Writ or any similar order/directions in nature of Writ of Mandamus directing the Respondents no.3 to take appropriate steps for conservation of Lal Mahal as the monument is in the dilapidated stage.

D) Pass any order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and interest of justice.”

6. It is trite that so far as declaration of a monument as a '*protected monument*' within the meaning of the expression in Section 2(j) of the Ancient Monuments Act, the Archaeological Survey of India is the concerned expert body and this court would have to refer to the considered views taken by this authority on the issue of declaration of a particular building as a protected monument under the statute.

7. Before us, the Archaeological Survey of India (respondent no.1) has filed a detailed counter affidavit contending that the criteria for protection under Section 2 of the Statute includes that a monument on a site should be of historical, archaeological or artistic interest and one which has been in existence for not less than 100 years.

8. So far as the process for declaration of a protected monument is concerned, the same has been specified under Section 4 of the statute which empowers the Central Government to make an appropriate declaration that a monument or ancient site as the case may be, is of national importance. Such declaration takes place by issuance of a notification in the official Gazette of India. In the present case, the Archaeological Survey of India has explained that with regard to the *Lal Mahal*, the Central Government has examined the issue and decided against notifying the monument as a '*protected monument*' under the Ancient Monuments & Archaeological Sites and Remains Act, 1958. It is submitted that pursuant to the directions dated 27th May, 2016, the Lal Mahal in Hazrat Nizamuddin area, was inspected on 20th September, 2016 by the Director (Monuments) of the

Archaeological Survey of India. The Director was accompanied by Shri Praveen Singh (Dy.S.A); Shri Deepak Kumar Bhardwaj (Surveyor Grade-I) and Sh. G. Nageshwar Rao (Photographer).

9. Copy of the inspection report dated 28th September, 2016 has been placed on record and reads thus :

“As per the direction of Director General, ASI the ‘Lal Mahal’ in Nizamuddin area (New Delhi) was inspected by the undersigned on 20.09.2016 in the company of Shri Praveen Singh, Dy.SA Shri Deepak Kumar Bhardwaj, Surveyor Grade-1 and Shri G. Nageshwar Rao, Photographer from Delhi Circle.

It is said that the Lal Mahal is said to have been built by Ghiyasuddin Balban in 13Th Century AD.

The Lal Mahal is located in densely Populated area of Nizamuddin. The monument is not at all visible for the road or the nearest pathway leading towards the nearby residential houses. On inquiry it was that the structure could be accessed through the residential house of Mr. Faizal.

Initially, members present in the house were not responded to the request of inspecting team to allow access by opening the gate of their private property so that the Lal Mahal was inspected, claiming the Lal Mahal is their private property. However on repeated request the members present called Mr. Faizal, owner of the house. He was informed about the approach of the ASI’s team to inspect the monument to take action in the light of directions issued by the Hon’ble High Court of Delhi in court case related to protection of the Lal Mahal. Mr. Faizal claim his ownership (claim to be owner or occupier) on adjoining land and structure of Lal Mahal. After great pursuance he agreed and provided monument through his house, whereas did not allowed ASI’s photographer for taking Photographs.

There is no proper and direct access to the monument. After crossing a residential room, a narrow passage leads to a portion of Lal Mahal. Existing residential buildings restricts the access to the complete monument. The portion of structure found in satisfactory condition and no major structural problem was noticed. However, it was instead of neglect.

The Lal Mahal is small domed structure resting on pillars. Due to considerable additions and alteration the original plan of the monument has been changed a lot. Walls with modern brick have been added, sometimes in the past to make it suitable for residential purpose. The pattern of doors and windows available indicate the addition and alteration are quite old but belong to 20th century. The pillared structure, as per the architectural pattern with dome over it, is nowhere representing its true (ancient) form at present. Existing residential buildings all around, shut down any free access to the Lal Mahal. These residential buildings have occupied the adjoining land leaving no space for free movement or inspection.

The Lal Mahal and its surrounding were reviewed in the light of implementation of AMASR ACT, 1958, its management and day today affairs of administration.

Since, there is no proper approach to monument, it is found not accessible to the public. The owner or Mr. Faizal (claim to be the owner or occupier), may not give access to public through his house. During discussion, he expressed his unwillingness on protection of Lal Mahal.

There is no space all around the monument, which is essential for maintenance of the structure. The ground condition is not favourable to the extent the government required without disturbing any private individual.

The owner or claimed to be owner- Mr. Faizal assured the inspecting team that their feelings are attached with the Lal

Mahal being their ancestral property and they will never destroy the structure.

The monument is situated in thickly populated areas of Nizamuddin. On protection it would be difficult to implement the provision of AMASR Act 1958 especially with regard to prohibited and regulated areas.

The monument found altered in course of time with modern walls, windows and doors. The ancient architectural pattern of any scope for such walls are noticed on spot.”

10. It is evident from the above that access to the Lal Mahal is through private property and has no independent access or space essential for maintenance of the structure. The inspection points out that the conditions were not favourable for declaration of the monument as a protected monument. It is noteworthy that the monument also stood altered/modified in the course of time with modern walls, windows and doors.

11. We find that in the order dated 21st September, 2016 passed in Cont. Case (C) 1063/2016, the learned Single Judge has also noted the statement on behalf of the Archaeological Survey of India that the complex was in a dilapidated condition and required inspection on several occasions.

12. So far as consideration of the inspection report is concerned, it appears to have been considered by the Central Government and disposed of by an order dated 19th November, 2016. This order has been placed before us by the writ petitioner and is assailed by him. On examining the above inspection report of the Archaeological

Survey of India, the Central Government (Ministry of Culture) was of the view that *“in view of the difficulty and issue pointed out in the aforesaid inspection report dated 20.09.2016 has decided against notifying the monument as protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 for the reasons stated above, since such reasons were found to be a major constraint in declaring Lal Mahal as a protected monument. Also because of the said reasons ASI find it unsuitable to discharge its statutory duties in respect of Lal Mahal as a protected monument.”*

The representation of the petitioner was disposed of in the above terms.

13. It is submitted by learned counsel for the petitioner that the respondents have not taken the larger public interest in protecting and in declaring this building as a protected monument. Given the detailed conditions noted in the inspection report dated 28th September, 2016 and relied upon by the Central Government in rejecting the petitioner's request by its order dated 19th November, 2016, we are unable to agree. The expert authorities have clearly noted the unwillingness of the owner and occupier of the property to grant access to the public through his house to approach the monument. The owner has also expressed unwillingness to declaration of the building as a protected monument. Inter alia, there is also no space at all around the monument which is essential for maintenance of the building. Most importantly, the monument was found altered in course of time with modern walls, windows and doors. The

Archaeological Survey of India has noted that there is modification of the archaeological features.

14. Learned counsel for the petitioner submits that the Parliamentary Standing Committee on Transport, Tourism and Culture in its 211th Report, submitted to both houses of Parliament on 19th February, 2014, has noted the issues pertaining to Lal Mahal and the grant of approval, in principle, of the Ministry to include Lal Mahal in the list of centrally protected monuments under the ASI. We find that the Committee has itself noted that *‘in the case of Lal Mahal, land grabbers and various authorities conniving with each other. They could successfully destroy the precious monuments...’* It is also noted that with regard to privately owned monuments, appropriate legal and institutional mechanism need to be put in place to make such private persons accountable for destruction of monuments/ancient sites.

15. It is explained by Dr. Ashwani Bhardwaj, learned counsel for the respondent nos.1 and 2 that these observations were recommendatory in nature and in fact, no such view had been taken by the competent authority. In fact it is the decision dated 19th November, 2016 which has to bind the consideration of the issue regarding declaration of the Lal Mahal as a protected monument.

16. In view of the above, we find no merit in this writ petition which is hereby dismissed.

CM No. 5286/2018

In view of the orders in the writ petition, this application does not survive for adjudication and is dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 12, 2018/kr

